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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 REBECCA AUGSBURGER,

8 Plaintiff,

9 v.

10 NAVY MUTUAL AID ASSOCIATION,

11 Defendant.

CASE NO. 2:17-cv-01817-BAT

**STIPULATED PROTECTIVE  
ORDER**

12 1. PURPOSES AND LIMITATIONS

13 Discovery in this action is likely to involve production of confidential, proprietary, or  
14 private information for which special protection may be warranted. Accordingly, the parties  
15 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
16 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
17 protection on all disclosures or responses to discovery, the protection it affords from public  
18 disclosure and use extends only to the limited information or items that are entitled to  
19 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
20 parties to file confidential information under seal.

21 2. “CONFIDENTIAL” MATERIAL

22 “Confidential” material shall include the following documents and tangible things  
23 produced or otherwise exchanged: Navy Mutual’s underwriting file for the Augsburgers, and  
Navy Mutual’s claims manuals, standard operating procedures and processes.

1           3.     SCOPE

2           The protections conferred by this agreement cover not only confidential material (as  
3 defined above), but also (1) any information copied or extracted from confidential material; (2)  
4 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
5 conversations, or presentations by parties or their counsel that might reveal confidential material.

6           However, the protections conferred by this agreement do not cover information that is in  
7 the public domain or becomes part of the public domain through trial or otherwise.

8           4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9           4.1     Basic Principles. A receiving party may use confidential material that is disclosed  
10 or produced by another party or by a non-party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
12 the categories of persons and under the conditions described in this agreement. Confidential  
13 material must be stored and maintained by a receiving party at a location and in a secure manner  
14 that ensures that access is limited to the persons authorized under this agreement.

15          4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
16 ordered by the court or permitted in writing by the designating party, a receiving party may  
17 disclose any confidential material only to:

18           (a)     the receiving party’s counsel of record in this action, as well as employees of  
19 counsel to whom it is reasonably necessary to disclose the information for this litigation;

20           (b)     the officers, directors, and employees (including in house counsel) of the  
21 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
22 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
23 designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this  
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of  
5 confidential material, provided that counsel for the party retaining the copy or imaging service  
6 instructs the service not to disclose any confidential material to third parties and to immediately  
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
10 A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
12 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
13 under this agreement;

14 (g) the author or recipient of a document containing the information or a custodian or  
15 other person who otherwise possessed or knew the information.

16 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
17 referencing such material in court filings, the filing party shall confer with the designating party  
18 to determine whether the designating party will remove the confidential designation, whether the  
19 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
20 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
21 standards that will be applied when a party seeks permission from the court to file material under  
22 seal.

1           5.       DESIGNATING PROTECTED MATERIAL

2           5.1       Exercise of Restraint and Care in Designating Material for Protection. Each party  
3 or non-party that designates information or items for protection under this agreement must take  
4 care to limit any such designation to specific material that qualifies under the appropriate  
5 standards. The designating party must designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify, so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not  
8 swept unjustifiably within the ambit of this agreement.

9           Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary  
12 expenses and burdens on other parties) expose the designating party to sanctions.

13           If it comes to a designating party's attention that information or items that it designated  
14 for protection do not qualify for protection, the designating party must promptly notify all other  
15 parties that it is withdrawing the mistaken designation.

16           5.2       Manner and Timing of Designations. Except as otherwise provided in this  
17 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
19 be clearly so designated before or when the material is disclosed or produced.

20           (a)       Information in documentary form: (e.g., paper or electronic documents and  
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
23 confidential material. If only a portion or portions of the material on a page qualifies for

1 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
2 making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any  
4 participating non-parties must identify on the record, during the deposition or other pretrial  
5 proceeding, all protected testimony, without prejudice to their right to so designate other  
6 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
7 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
8 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
9 confidential information at trial, the issue should be addressed during the pre-trial conference.

10 (c) Other tangible items: the producing party must affix in a prominent place on the  
11 exterior of the container or containers in which the information or item is stored the word  
12 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
13 the producing party, to the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
15 designate qualified information or items does not, standing alone, waive the designating party’s  
16 right to secure protection under this agreement for such material. Upon timely correction of a  
17 designation, the receiving party must make reasonable efforts to ensure that the material is  
18 treated in accordance with the provisions of this agreement.

## 19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3         6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
4 regarding confidential designations without court involvement. Any motion regarding  
5 confidential designations or for a protective order must include a certification, in the motion or in  
6 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
7 conference with other affected parties in an effort to resolve the dispute without court action. The  
8 certification must list the date, manner, and participants to the conference. A good faith effort to  
9 confer requires a face-to-face meeting or a telephone conference.

10         6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
11 intervention, the designating party may file and serve a motion to retain confidentiality under  
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
13 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
14 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
15 other parties) may expose the challenging party to sanctions. All parties shall continue to  
16 maintain the material in question as confidential until the court rules on the challenge.

17         7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
18 OTHER LITIGATION

19         If a party is served with a subpoena or a court order issued in other litigation that compels  
20 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
21 party must:

22         (a)       promptly notify the designating party in writing and include a copy of the  
23 subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
2 the other litigation that some or all of the material covered by the subpoena or order is subject to  
3 this agreement. Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
5 designating party whose confidential material may be affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
8 material to any person or in any circumstance not authorized under this agreement, the receiving  
9 party must immediately (a) notify in writing the designating party of the unauthorized  
10 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
11 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
12 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
15 PROTECTED MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently  
17 produced material is subject to a claim of privilege or other protection, the obligations of the  
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
19 provision is not intended to modify whatever procedure may be established in an e-discovery  
20 order or agreement that provides for production without prior privilege review. The parties  
21 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals, each receiving

1 party must return all confidential material to the producing party, including all copies, extracts  
2 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
3 destruction.

4 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
5 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
6 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
7 work product, even if such materials contain confidential material.

8 The confidentiality obligations imposed by this agreement shall remain in effect until a  
9 designating party agrees otherwise in writing or a court orders otherwise.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: March 2, 2018

s/Joel B. Hanson

Joel B. Hanson, Attorneys for Plaintiff

12 DATED: March 2, 2018

s/Emilia L. Sweeney

Emilia L. Sweeney, Attorneys for Defendant

14 PURSUANT TO STIPULATION, IT IS SO **ORDERED**.

15 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the production of  
16 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
17 proceeding in any other court, constitute a waiver by the producing party of any privilege  
18 applicable to those documents, including the attorney-client privilege, attorney work-product  
19 protection, or any other privilege or protection recognized by law.

20 DATED this 5th day of March, 2018.

21 

22 BRIAN A. TSUCHIDA

23 United States Magistrate Judge